

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: CARGILL, INCORPORATED	ADMINISTRATIVE CONSENT ORDER NO. 2013-AQ-03
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TO: Cargill, Incorporated
Reggie Schoen
3030 East Granger Avenue
Des Moines, Iowa 50317

Cargill, Incorporated
CT Corporation System, Registered Agent
500 East Court Avenue
Des Moines, Iowa 50309

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Cargill, Incorporated (Cargill) for the purpose of resolving the air quality violations which occurred during the renovation of a building at Cargill's facility in Des Moines, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: **Relating to legal requirements:**

Tom Wuehr, Environmental Specialist
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-7212

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which

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authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Cargill operates a corn and soybean processing facility located at 3030 East Granger Avenue in Des Moines, Iowa. Cargill was in the process of renovating a building referred to as the Head House at the time of the violations. Cargill hired Ziegler Industries (Ziegler) to remove the asbestos containing material prior to the renovation. Ziegler's bid to remove the asbestos containing paint and repaint the Head House was \$89,000.00. Ziegler submitted the asbestos removal and renovation notification to the DNR on April 4, 2012.

2. On May 2, 2012, DNR received a complaint that Ziegler was blowing asbestos containing paint chips onto vehicles in the parking lot at Cargill during the removal of the paint from the Head House. Tom Wuehr, DNR Air Quality environmental specialist, contacted Gregory Malinski, Ziegler president, about the situation. Mr. Malinski assured Mr. Wuehr that Ziegler would HEPA vacuum the parking lot.

3. On May 16, 2012, DNR received a complaint about improper removal of asbestos containing material at the Cargill building. The complainant stated that Ziegler was using high pressure water to remove asbestos containing paint from a building at Cargill without containment and without protective clothing or respirators.

4. On May 16, 2012, Mr. Wuehr conducted a complaint investigation at the Cargill building. Mr. Wuehr observed a large amount of paint chip debris scattered throughout the facility. The paint chip debris was scattered on roofs, parking lots, along the company rail line, and in other generalized areas. Mr. Wuehr collected four samples of suspect material; the four samples each contained 6% chrysotile asbestos. Mr. Wuehr noted that there were no critical barriers and containment had not been set up prior to the removal project. During the inspection, three Cargill employees and two Ziegler employees accompanied Mr. Wuehr on the inspection. After seeing the extensive contamination of the area, Mr. Wuehr asked the Cargill employees to cordon off the area and not allow anyone into the contaminated areas. Mr. Wuehr also requested that Cargill hire an asbestos abatement contractor to decontaminate the area as soon as possible.

5. On May 29, 2012, Mr. Wuehr conducted a follow-up inspection at Cargill. Mr. Wuehr was accompanied by two Cargill employees. Cargill hired Pro Environmental to clean up the area. The company had found large amounts of asbestos containing paint chips on the roofs of some of the silos and buildings and were concentrating the clean-up efforts in those areas first. Mr. Wuehr found additional paint chips in the parking lot area. It appeared the wind had carried some of the paint chips into the parking lot that had been previously cleaned. Mr. Wuehr

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advised the Cargill employees to clean the area immediately. The Cargill employees assured Mr. Wuehr that the area would be cleaned immediately.

6. On June 28, 2012, DNR issued a Notice of Violation letter to Cargill as the owner of the facility. The letter included the following violations: failure to remove all regulated asbestos containing material, failure to adequately wet all asbestos containing material, and failure to seal all asbestos containing material in leak tight containers.

7. On July 5, 2012, Mr. Wuehr contacted Cargill and was informed that decontamination activities had been ongoing since May 21, 2012 and that cleanup should be completed by the end of August 2012, at a cost of \$300,000.00. The cleanup was completed on August 24, 2012.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. Iowa Code section 455B.133 provides for the Commission to establish rules governing the quality of air and emission standards. Pursuant to Iowa Code section 455B.133, 567 IAC 23.1(3) was established, which adopts by reference the federal regulations regarding asbestos removal. The United States Environmental Protection Agency has delegated to the State of Iowa the authority to implement and enforce the demolition and renovation portions of the federal National Emission Standards for Hazardous Air Pollutants (NESHAP), found at 40 CFR part 61, subpart M.

3. 40 CFR section 61.145(c) details the procedures for asbestos emission control and states that each owner or operator to whom the provisions apply shall comply with the procedures. The facts in this case indicate that Cargill was not in compliance with these provisions when the renovation project occurred.

4. 40 CFR 61.145(c)(1) provides that all regulated asbestos containing material shall be removed from a regulated facility before any activity begins that would break up, dislodge, or similarly disturb the material or preclude access to the material for subsequent removal. During Mr. Wuehr's inspection he observed dry asbestos containing paint chips scattered throughout the Cargill facility. The facts in this case indicate violations of this provision.

5. 40 CFR 61.145(c)(6)(i) provides that all regulated asbestos containing material, including material that has been removed or stripped, shall be adequately wet and shall remain wet until collected and contained. During Mr. Wuehr's

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inspection he observed dry asbestos containing paint chips scattered throughout the Cargill facility. The facts in this case indicate violations of this provision.

6. 40 CFR 61.150 contains standards for asbestos waste disposal for demolition and renovation operations. Specifically, 40 CFR 61.150(a)(1)(iii) provides that all asbestos containing waste materials, while wet, shall be sealed in leak-tight containers or wrapping. Mr. Wuehr found dry regulated asbestos containing material scattered throughout the Cargill facility from the removal of the paint from the Head House at Cargill. The above facts indicate violations of this provision.

V. ORDER

THEREFORE, it is hereby ordered and Cargill agrees to do the following:

1. Cargill shall pay a penalty of \$3,500.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an administrative consent order with a \$3,500.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Failure to follow the proper asbestos NESHAP regulations allowed Cargill to recognize an economic benefit in avoided asbestos removal procedures. The cost of containment for the area is estimated to be at least \$33,000.00. Other asbestos abatement contractors contacted by the DNR estimate the project would have cost at least \$175,000.00. However, Cargill expended over \$300,000.00 in correcting the error of Ziegler and

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any economic benefit Cargill received was negated by the high cost of cleanup. Therefore, a minimal \$500.00 is assessed for this factor.

Gravity of the Violation – Asbestos is known to cause cancer and is a hazardous air pollutant. Failure to keep the paint chips adequately wet during the removal and failure to properly dispose of asbestos containing waste material created an environmental hazard. The violations threaten the integrity of the regulatory program because compliance with the asbestos regulations is required of all persons in this state. Therefore, \$3,000.00 is assessed for this factor.

Culpability – Cargill hired an asbestos abatement contractor to perform the asbestos removal and had an expectation that the contractor would properly remove the asbestos containing material. Additionally, Cargill expended a large amount of money to clean up the asbestos containing material once the DNR required the clean-up. Therefore no penalty is being assessed for the culpability factor.

VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Cargill. For that reason, Cargill waives the rights to appeal this administrative consent order or any part thereof.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146.



CHUCK GIPP, DIRECTOR
Iowa Department of Natural Resources

Dated this 20th day of
January, 2013.



Cargill, Incorporated

Dated this 9th day of
JANUARY, 2013.

Kelli Book; Tom Wuehr; DNR Field Office 5; EPA; VII.C.4